

Department of the Army, DoD

§ 536.24

agencies other than the armed service to which the Soldier is attached may also provide a remedy).

(v) Assigned as students or ordered into training at a non-federal civilian educational institution, hospital, factory, or other facility (excluding soldiers on excess leave or those for whom the training institution or organization has assumed liability by written agreement).

(vi) Serving on full-time duty at non-appropriated fund (NAF) activities.

(vii) Of the United States Army Reserve (USAR) and ARNG on active duty under Title 10, U.S.C.

(2) Military personnel who are United States Army Reserve soldiers including ROTC cadets who are Army Reserve soldiers while at annual training, during periods of active duty and inactive duty training.

(3) Military personnel who are soldiers of the ARNG while engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or engaged in properly authorized community action projects under the Federal Tort Claims Act (FTCA), the Non-Scope Claims Act (NSCA), or the National Guard Claims Act (NGCA), unless performing duties in furtherance of a mission for a state, commonwealth, territory or possession.

(4) Civilian officials and employees of both the DOD and DA (there is no practical significance to the distinction between the terms “official” and “employee”), including but not limited to the following:

(i) Civil service and other full-time employees of both the DOD and DA who are paid from appropriated funds.

(ii) Persons providing direct health care services pursuant to personal service contracts under 10 U.S.C. 1089 or 1091 or where another person exercised control over the health care provider’s day-to-day practice. When the conduct of a health care provider performing services under a personal service contract is implicated in a claim, the CJA, Medical Claims Judge Advocate (MCJA), or claims attorney should consult with USARCS to determine if that health care provider can be considered an employee for purposes of coverage.

(iii) Employees of a NAF instrumentality (NAFI) if it is an instrumen-

talidity of the United States and thus a federal agency. To determine whether a NAFI is a “federal agency,” consider both whether it is an integral part of the Army charged with an essential DA operational function and also what degree of control and supervision DA personnel exercise over it. Members or users, unlike employees of NAFIs, are not considered government employees; the same is true of family child care providers. However, claims arising out of the use of some NAFI property or from the acts or omissions of family child care providers may be payable from such funds under subpart K of this part as a matter of policy, even when the user is not acting within the scope of employment and the claim is not otherwise cognizable under any of the other authorities described in this part.

(5) Prisoners of war and interned enemy aliens.

(6) Civilian employees of the District of Columbia ARNG, including those paid under “service contracts” from District of Columbia funds.

(7) Civilians serving as ROTC instructors paid from federal funds.

(8) ARNG technicians employed under 32 U.S.C. 709(a) for claims accruing on or after January 1, 1969 (Public Law 90-486, August 13, 1968 (82 Stat. 755)), unless performing duties solely in pursuit of a mission for a state, commonwealth, territory or possession.

(9) Persons acting in an official capacity for the DOD or DA either temporarily or permanently with or without compensation, including but not limited to the following:

(i) Dollar-a-year personnel.

(ii) Members of advisory committees, commissions, or boards.

(iii) Volunteers serving in an official capacity in furtherance of the business of the United States, limited to those categories set forth in DA Pam 27-162, paragraph 2-45.

NOTE TO § 536.23: See the parallel discussion at DA Pam 27-162, paragraph 2-2.

§ 536.24 Delegation of investigative responsibility.

(a) *Area Claims Office.* An ACO is authorized to carry out its investigative responsibility as follows:

(1) At the request of the area claims authority, commanders and heads of Army and DOD units, activities, or components will appoint a commissioned, warrant, or noncommissioned officer or a qualified civilian employee to investigate a claims incident in the manner set forth in DA Pam 27-162 and this part. An ACO will direct such investigation to the extent deemed necessary.

(2) CPOs are responsible for investigating claims incidents arising out of the activities and operations of their command or agency. An ACO may assign area jurisdiction to a CPO after coordination with the appropriate commander to investigate claims incidents arising in the ACO's designated geographic area. (See § 536.3(f).)

(3) Claims incidents involving patients arising from treatment by a health care provider in an Army medical treatment facility (MTF), including providers defined in 536.23(b)(4)(ii), will be investigated by a claims judge advocate (CJA), medical claims judge advocate (MCJA), or claims attorney rather than by a unit claims officer.

(4) An ACO will publish and distribute a claims directive to all DOD and Army installations and activities including active, Army Reserve, and ARNG units as well as units located on the post at which the ACO is located. The directive will outline each installations' and activities' claims responsibilities. It will institute a serious claims incident reporting system.

(b) *Command claims service responsibility.* A command claims service is responsible for the investigation and processing of claims incidents arising in its geographic area of responsibility or for any incidents within the authority of any foreign claims commission (FCC) it appoints. This responsibility will be carried out by an ACO or a CPO to the extent possible. A command claims service will publish a claims directive outlining the geographic areas of claims investigative responsibilities of each of its installations and activities, requiring each ACO or CPO to report all serious claims incidents directly to the Commander USARCS.

(c) *USARCS responsibility.* USARCS exercises technical supervision over all claims offices, providing guidance on

specific cases throughout the claims process, including the method of investigation. Where indicated, USARCS may investigate a claims incident that normally falls within a command claims services', an ACO's, or a CPO's jurisdiction. USARCS typically acts through an area action officer (AAO) who is assigned as the primary point of contact with command claims services, ACOs or CPOs within a given geographic area. In areas outside the United States and its commonwealths, territories and possessions, where there is no command claims service or ACO, USARCS is responsible for investigation and for appointment of FCCs.

NOTE TO § 536.24: See the parallel discussion at DA Pam 27-162, paragraph 2-3.

§ 536.25 Procedures for accepting claims.

All ACOs and CPOs will institute procedures to ensure that potential claimants or attorneys speak to a CJA, claims attorney, investigator, or examiner. On initial contact, claims personnel will render assistance, discuss all aspects of the potential claim, and determine what statutes or procedures apply. Assistance will be furnished to the extent set forth in DA Pam 27-162, paragraph 2-4. To advise claimants on the correct remedy, claims personnel will familiarize themselves with the remedies listed in DA Pam 27-162, paragraphs 2-15 and 2-17.

§ 536.26 Identification of a proper claim.

(a) A claim is a writing that contains a sum certain for each claimant and that is signed by each claimant, or by an authorized representative, who must furnish written authority to sign on a claimant's behalf. The writing must contain enough information to permit investigation. The writing must be received not later than two years from the date the claim accrues. A claim under the Foreign Claims Act (FCA) may be presented orally to either the United States or the government of the foreign country in which the incident occurred, within two years, provided that it is reduced to writing not later than three years from the date of accrual. A claim may be transmitted by facsimile or telegram.